IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 507 OF 1995

1	Arun Vishnu Pataskar. Age adult, Occ. Service.	)
2	Mrs. Anuradha Arun Pataskar Age Adult, Occ. Household. Both residing at Aishwaryapuri Apts., Flat No. 5, Dhanukar Colony, Kothrud, Pune 411 029.	)... Appellants.

Versus

The State of Maharashtra. ... Respondent.

Mr. Kartik Garg, advocate appointed for Appellants.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : FEBRUARY 1, 2016

<u>JUDGMENT:</u>

1. The appellant No. 1 herein is convicted of an offence punishable under Section 13(2) read with Section 13(1)(e) of Prevention of Corruption Act, 1988 and is sentenced to suffer R.I. for 3 years and to

pay a fine of Rs. 25,000/- I.d. to suffer R.I. for 18 months. The accused No. 2/appellant No. 2 Anuradha, wife of appellant No. 1 Arun Pataskar is convicted for the offence punishable under Section 109 of the Indian Penal Code read with Section 13(2) read with 13(1) (e) of the Prevention of Corruption Act, 1988. She is sentenced to suffer R.I. for one year and to pay fine of Rs. 5,000/- I.d. to suffer further R.I. for 6 months by the Special Judge, Pune in Special Case No. 12 of 1990 vide Judgment and Order dated 13/9/1995. Hence, this appeal.

2 Such of the facts necessary for the decision of this appeal are as follows :

(i) Appellant Arun was working as a public servant and was officiated as an agricultural Assistant in Soil Conservation Department. He had joined the service on 1/6/1964. He continued to work in the same capacity till 10/1/1989.

(ii) The appellant No. 2 happens to be his wife. They had got married in the year 1974.

(iii) It is the case of the prosecution that the Anti Corruption Bureau, Pune had received a secret information that the appellant who happens to be the public servant has amassed huge property by illegal means. The preliminary enquiry was conducted by DYSP Shri Kamble. He had submitted a report to the Superintendent of Police on 2/1/1989.

(iv) Pursuant to the directions of the Superintendent of Police dated 3/1/1989, DYSP Kamble had again conducted a secret inquiry regarding disproportionate property of the accused and report to that effect was filed on 9/1/1989.

(v) Upon perusal of the report, Superintendent of Police had directed DYSP Kamble to lodge a report. Accordingly, first information report was lodged against the accused on 10/1/1989 at Deccan Gymkhana Police Station. On the basis of the said report, Crime No. 7 of 1989 was registered against the accused having committed offence punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Correction Act.

(vi) The house service was conducted after registration of offence and a detailed inventory was made. It is the specific case of the prosecution that total income of the accused from all known sources was to the tune of Rs. 2,88,845/-. The expenditure for the check period which was 1/6/1964 to 10/1/1989, was Rs. 1,25,750/-.

(vii) According to the prosecution, the savings could have been only Rs. 1,63,095/-. Total assets found with the accused were of the value of Rs. 4,73,791/-. This excluded the deduction of streedhan of accused No. 2 and the gifts received at the time of marriage and after exclusion of the said, disproportionate assets was Rs. 4,13,691/-.

(viii) After completion of investigation, charge-sheet was filed on 28/12/1990. The case was registered as Special Case No. 12 of 1990. Charge was framed against the accused on 17/2/1993 below Exh. 94.

3 The prosecution examined 10 witnesses to bring home the guilt of the accused. The prosecution also relied upon a large number of documents. Some of the documents were admitted by the accused under Section 294 of the Code of Criminal Procedure, 1973. The

accused No. 2 examined herself as defence witness and had also examined Ravindra Pataskar, who happens to be the real brother of accused No. 1 as defence witness No. 2.

4 P.W. 1 Shivaji Gabaji Jekte was working as supervisor in the office of Director of Agricultural, Maharashtra State, Pune. He had been a panch for the house search panchanama of Suryakant Bhalchandra Thite. Suryakant Thite was summoned from the office. The wife of Thite was present in the house. She placed before the officers a box containing two cotton bags and some documents. Those boxes were jwellary boxes. The goldsmith was summoned. The list of 12 golden ornaments was prepared. The ornaments in both the boxes were weighed by the goldsmith. The documents in the bags were four fixed deposit receipts of the value of Rs. 5,000/- each in the name of Arun Pataskar, cumulative deposit receipts of Rs. 5,000/- in the name of accused No. 1, passbook of the savings account of accused No. 1, two cheque books, two diaries of the year 1984 and some gold receipts from a goldsmith at Baramati. The

inventory was signed by the panchas. The inventories are at Exh. 99. The accused had chosen not to cross-examine the witness and hence, it cannot be said that the accused No. 1 seriously challenged the inventories.

5 P.W. 2 Suhas Wadekar was working in the office of the Irrigation as Tracer. The office was situated in the central building. He was summoned to ACB office, Pune alongwith Arvind Shridhar Mahamuni who was working in his office. The investigating agency including P.W. 2 had been to Janata Sahakari Bank, situated at Karve Road. They had disclosed to the Manager that they desire to seal the locker of Anuradha Pataskar bearing locker No. 118. The locker was sealed. The bank manager signed on the seal. Panchanama was prepared. They had then visited the house of the accused. The present appellant No. 1 had accompanied the investigating agency to the house of the accused. From there they had been to the bank. The locker was opened by the accused. They had also taken with them a goldsmith Shri Thakalkar. 13 ornaments were taken out from the

locker out of which four ornaments were of gold and the others were of silver. List of articles is at Exh. 102. The valuation is done by the goldsmith. The ornaments were restored to the locker and the same was sealed. The panchanama is at Exh. 103. The witness has not been cross-examined.

6 P.W. 3 Vijay Renukdas is also a panch for house seizure panchanama of the accused on 10/1/1989. A list of the articles found in the house were recorded in the panchanama. Certain documents were also seized. The accused was then taken to Bank of Maharashtra, Kothrud branch. Locker No. 69 was opened. There were silver articles in the said locker. The goldsmith had valued the said articles. The locker was sealed after restoring the contents and the key was returned to the accused.

7 In the cross-examination, the witness has feigned ignorance as to whether the raiding party had showed house search warrant to the accused or not. He has further stated that their signatures were not

obtained in paper like house search letter. It is admitted that the accused had recorded their objections at the time when the valuation report was prepared. However, the same was not included in the recitals of the panchanamas. As far as Exh. 105 of the Schedule A is concerned, the witness has stated that he was not sure as to whether the show case was old one or not. It is also admitted that in respect of items 1 to 5 in Exh. 106, the price is inclusive of the price of the containers and the articles found in it. It is also admitted that the price of the articles seized, furnitures and other articles in the house. The relevant date for valuation was the prevailing market price i.e. the date of raid, where as the accused had specifically stated that there are old articles.

8 P.W. 4 Suryakant Bhalchandra Tike happens to be the brother-in-law of accused No. 1 i.e. the wife of the accused No. 1 and wife of P.W. 4 are real sisters. P.W. 4 was serving in National Chemical Laboratory as a Technician 2(3). He had retired on superannuation

on 30/9/1994. He was residing in the staff quarter of NCL, whereas the accused was residing in Dhanukar Colony, Kothrud.

9 P.W. 4 has deposed before the Court that on 6/1/1989 in the evening at about 7 to 7.30 p.m. the accused had come to his house with a box containing ornaments and had requested him to keep the same in the safe custody in his house. P.W. 4 had obliged. P.W. 4 and accused No. 1 had prepared an inventory of the ornaments in the box and had kept copy of the same for themselves. On 11/1/1989 DYSP Shri Kamble had visited his office and had enquired as to whether the accused had kept ornaments in his house. P.W. 4 answered in the affirmative. P.W. 4 had then visited his own house alongwith DYSP Kamble. They were accompanied by two panchas. He had produced the boxes containing ornaments and also certain documents kept by the accused no. 1. A panchanama to that effect was prepared. The panchanama is at Exh. 99.

10 In the cross-examination, P.W. 4 has admitted that the name of their father-in-law is Mahadev Bhise. P.W. 4 has got married in the year 1966, where as the accused had got married in the year 1974. At the time of marriage, the father-in-law had gifted four gold bangles to accused No. 2, who happens to be the legally wedded wife of the accused No. 1. The weight of the gold bangles were 40 g.m. The father-in-law had also gifted other golden ornaments in the form of ear rings, finger rings and 5 gm. were given to the accused. The accused was also gifted with one gold finger ring. At the time of thread ceremony of the son of the accused No. 1 P.W. 4 had gifted silver articles to the son of the accused. The said thread ceremony had taken place on 12/6/1986. According to P.W. 4, the accused had spent an amount of Rs. 3,000/- at the time of thread ceremony. It is specifically admitted by P.W. 4 that the accused No. 1 has two brothers namely Ravindra and Rammanna and that they are not on good terms with the accused No. 1. The accused No. 1 was cultivating ancestral agricultural land. He had taken crop of grains and sugarcane. The elder brother of accused no. 1 used to look after

the agricultural land. It is specifically elicited in the cross-examination that when the accused had been to the house of the P.W. 4 to keep the ornaments, at that time, his brother Rammanna and his wife alongwith both the accused were to go for yatra. Ravindra was creating problems for them and therefore, the golden and silver articles were kept in the safe custody of P.W. 4.

12 P.W. 5 Mahadeo Bhise is father-in-law of accused No. 1 and father of accused No. 2. He has admitted before the Court that he is a father of two sons and 3 daughters. The wife of accused No. 1 is his daughter named as Durga and the marriage was performed in the year 1974. That P.W. 5 had gifted several gold ornaments to his daughter. That P.W. 5 had taken a loan of Rs. 15,000/- from the employees' society. He had gifted 60 gms. of gold to the wife of accused No. 1 out of which 30 gms. were purchased and 30 gms. were at home. It is also admitted that at the time of festival, he used to give articles to the accused No. 2. At the time of Sankrant and Dasara festival also, he has given silver articles to the appellants.

13 P.W.6 Suryakant Indalkar was working as an agricultural officer in Daund Panchayat Samati. He has deposed before the court that the block development officer had requested him to meet DYSP Shri Kamble in order to give information about the land of Ramnath Pataskar. He has deposed before the Court that Ramnath Pataskar was the manager of the said land, where as the accused No. 1 is the real brother of Ramnath and has share in the said agricultural land. There are two pieces of agricultural land bearing gat No. 243 and 353. There is a well situated in Gat No. 243, where the land is under irrigation for a period of 8 months. The DYSP Shri Kamble sought information in respect of the crops cultivated from 1978-79 to 1988-1989. P.W. 6 had inspected the record from Krushi Utpana Bazar Samiti and had also obtained records from sugar factory and verified the rate of the sugarcane. He had prepared statement in respect of the land gat No. 243 and submitted it to DYSP Kamble, which is at Exh. 119. He had also prepared similar record in respect of gat No. 253. According to P.W. 6, major portion of that land is fallow.

There was no proper water facility. The only crop that was cultivated in gat No. 353 was Jawar and Matki. Statement in respect of gat No. 353 is at Exh. 120.

14 It is elicited in the cross-examination that there are about 8 tamarind trees in Gat No. 243. That it yields a good income. It is specifically admitted that P.W. 6 had not shown the income from the tamarind trees in his statement at Exh. 119. He had shown the total net profit of 10 years as Rs. 83,630/-. There can be a margin of 10% in the estimate. In respect of Gat No. 353, P.W. 6 has admitted that good grass can be grown on the said land and can be given for the purpose of grazing cattle and the income can be to the tune of Rs. 500/-. It is also admitted that the cultivators used to sell the stone and that there are huge stones in Gat No. 353. It is admitted that P.W. 6 has only given a remark that Gat No. 353 may not yield any income.

15 P.W.7 Ratnakar Bhagwat was working as assistant superintendent in the office of Joint Director of Agricultural. In the year 1989, he was working as Assistant Superintendent in the office of Sub-Divisional Soil Conservation office. In the course of enquiry, the superior officer of the Sub-Divisional Soil Conservation, Pune had sought information regarding salary of accused No. 1. He had collected the said information and submitted to the ACB office the salary of the accused No. 1 for the period 1/6/1964 to 31/12/1988. The consolidated statement was submitted, which is at Exh. 122. P.W. 7 has deposed that net salary of the accused was Rs. 1,60,768.75ps. for the above check period. It is also admitted that they had received 8 forms from the office of ACB to be filed up by the accused.

16 In the cross-examination P.W.7 has specifically admitted that he had taken inspection of the pay bill only from his office and had not verified the pay bill of the accused, from other offices. He had also not called for the pay bill of the accused from the other offices. He

had received separate information regarding the pay of the accused from each station. He had provided one copy to ACB. This would be the relevant issue since it is the case of the prosecution that during the check period accused No. 1 had served at Daund, Shirur, Indapur and Pune. It is also admitted that the chart showing the salary does not indicate encashment of leave by the accused. According to P.W. 7 the provision of surrender of leave had started from the year 1975-76. That time an employee was entitled to the said provisions of encashment of leave in a block of 2 years. After 1980, the surrender leave could be availed of any year if leave is in balance. It is also admitted that the records would show that the accused had surrendered leave in the month of June, 1977, March, 1978, June,1979, June, 1980 and November, 1983.

17 At that stage of the cross-examination, the learned APP had sought leave of the Court to file statement regarding salary of the accused month-wise. Leave was granted. It was taken on record and is marked as Exh. 126. The extract of the salary yearwise is at Exh.

127. Monthly extract from the year 1964 to 1988 is at Exh. 128 to 151.

18 It is elicited in the cross-examination that P.W. 7 had also worked as cashier for 6 years. It is admitted that although there was deduction of GPF advance to the tune of Rs. 12,598/-, the receipt of this amount by the accused was not shown in the statement. It is admitted that the accused No. 1 had taken GPF advance on 3 occasions to the tune of Rs. 13,028/-. It is admitted that the said amount to be received by the accused has to be shown in the extract of income. It is admitted that the festival advance availed by the accused No. 1 was not shown in the chart. However, the recovery of the same was shown in the column No. 12.

19 P.W. 7 had perused the service book record of the accused at the time of deposition and has admitted that on 1/7/1976 basic pay of the accused was Rs. 350/-, but it is shown as Rs. 360/-. The basic pay as on 1/6/1977 was Rs. 370/- and as on 1/6/1978 it was Rs.

380/-, but P.W. 7 has admitted that he has shown the basic pay upto May, 1978 at the rate of Rs. 160/-. It is also admitted that in the year 1976, the employees had received the arrears of Badkas Commission, but the receipt of the same is not shown in the statement of income. It is admitted that P.W. 7 would not be in position to say whether the correct figure is shown in the statement or not, unless the original bills were verified. It is admitted by P.W. 7 that difference of arrears of Rs. 1380/- paid from April, 1966 to May, 1970 was not shown in the receipts.

20 P.W. 8 Ravindra Pataskar happens to be elder brother of accused no. 1. P.W. 8 has submitted that their brother Ramnath was serving at Malegaon. P.W. 8 has deposed before the Court that three brothers have ancestral property at Wada and agricultural land at Vasunde, Taluka-Daund, Dist. Pune. That the said land is known as Panmala, from which they did not yield any income. That the brothers had requested some person to reside for maintaining the said property. P.W. 8 and his wife were also in service. He has

deposed before the Court that Survey No. 243 is admeasuring 16 acres and survey No. 353 is admeasuring 16 to 17 acres. It is also admitted that the agricultural land known as Panmala was being managed by the second brother Ramnath in the capacity of Manager of Hindu Joint Family, whereas all the three brothers are co-sharers in the field at Survey No. 353 which is known as Waghdhare. P.W. 8 was cultivating his share of agricultural land since 1981. He was taking sugarcane crop in one and half acre land and earn an income of Rs. 12,000/- after deducting expenses. It is also admitted that the accused No. 1 was cultivating his portion after 1981. Tamarind trees in the agricultural land at Panmala yields income of Rs. 5000/- to 6000/- which is share by all three brothers. It is admitted that their mother died in the year 1990 at the residence of accused No. 1. After 1985, their mother was residing with accused No. 1. The partition between brothers is a notional partition and therefore, the same is not reflected in the 7/12 extract. In the year 1988-89, he could get an income of Rs. 14,000/- from sale of jaggery. It is also admitted that P.W. 8 had filed civil suit against the accused No. 1 and Ramnath in the Court of Daund seeking partition and separate possession. The suggestion that P.W. 8 had filed a written complaint against the accused No. 1 to anti corruption bureau is denied.

21 P.W.9 Appasaheb Bhujbal was working as Joint Director Agricultural, Pune. He has deposed before the Court that the Superintendent of Agricultural Officer, Pune Region, Pune has authority to appoint and remove accused No. 1 i.e. public servant in the category of Class III. P.W. 9 has deposed before the court that on 9/11/1990 he had received a report from anti corruption bureau against accused No.1. The report was accompanied by documents. The documents were with him till 22/11/1990 and after application of mind P.W. 9 had granted sanction for prosecution of the accused No. 1. According to him, he had dictated the sanction order and had signed the typed copy of the sanction order. The original sanction order is at Exh. 159. P.W. 9 had signed the same on 21/11/1990 and had forwarded the same on the next day i.e. on 22/11/1990. The covering letter is at Exh. 158. In the cross-examination, a specific

suggestion was given that 10/11/1990 second Saturday and 11/11/1990 was a Sunday. P.W.9 evaded to answer the said suggestion. That he required only two days to study the case papers. He has also stated that alongwith the case papers, he had received the final report of investigation. It was on the basis of the final report that he was satisfied that sanction needs to be granted. The final report had included the chart showing assets, income and expenditure. Dy. S.P. Kamble had shown total salary of the accused as Rs. 2,07,972/-. Before according sanction, P.W. 9 claims to have called monthly salary statement of the accused No. 1 and also called for independent information from various places and had therefore, quoted the figure Rs.1,60,768.75 paise. P.W. 9 claims to have issued letter to various places where the accused No. 1 was posted and had called for the statements of the salary from each of the respective places.

22 It is pertinent to note that P.W.9 has specifically admitted as follows : “After granting sanction I obtained the information

regarding the salary of the accused." It is clear from the said admission that the total and correct salary of the accused No. 1 was not taken into consideration at the time of granting sanction for prosecution. The verification was done subsequently and the P.W. 9 had quoted the salary as per annexures "B" of Exh. 157. At annexure "B" of Exh. 157 agricultural income of the accused is shown as Rs. 30,460/- for the period June, 64 to December, 1988. P.W. 9 claims to have conducted an independent enquiry and verification in respect of the items of salary and agricultural income of the accused No. 1. He had conducted the said enquiry before granting sanction on 21/11/1990. It is admitted by P.W.9 that he had requested the Sub-Divisional Soil Conservation Officer, Saswad to collect the 7/12 extracts. However, he was not sure about the period for which it was called. It is also admitted that the prices of the assets were collected on the basis of the **report submitted by ACB**. Since panchanama was not sent alongwith the papers of investigation, P.W.9 has admitted that he has no occasion to verify the figures at annexure "A" with the panchanama of the ACB.

23 Upon perusal of evidence, it is clear that there was no independent enquiry. At the time of seeking sanction for prosecution, correct figures of the known source of income were not placed before the sanctioning authority. The learned Counsel therefore, submits that there has been non application of mind while according sanction for prosecution. The charge-sheet submitted and the copies served upon the appellant was not in compliance of Section 207 of the Code of Criminal Procedure, 1973. Annexure “B” at Exh. 157 would show that (1) the total pay and allowances from June, 1964 to 1984 is Rs.1,60,768.75ps., (2) $1/3^{rd}$ amount from agricultural income received from the land at village Vasunde was Rs.30,460/-, (3) Rent received from tenant occupying flat in Uruli-Kanchan till December, 1988 was Rs. 20,500/-, (4) Accused No. 1 had received money by selling golden ornaments to the tune of Rs. 25,152.40 in the year 1984, (5) Rs.7836.15 was the interest received from various bank accounts, (6) Accused No. 1 had obtained loan from GPF to the tune of Rs. 13,028/-, (7) He had taken loan of Rs. 20,000/- from Mr.

Bhosekar in the year 1985, (8) Rs. 11,100/- was taken as a loan from Rupee Cooperative Bank, Nigdi Branch, Pune. The total income was shown as Rs. 2,88,845.30/-. It was on the basis of the said documents that the sanction for prosecution was granted.

24 Accused no. 2 has chosen to be examined on oath as a defence witness. She has deposed before the Court that her father was a checker in Pune Municipal Transport. He had retired on superannuation. That she got married with with accused No. 1 on 24/1/1974. Accused No. 1 was a public servant. He was in service since year 1964. At the time of marriage, her father had gifted her 40 gms. gold bangles, 5 gms. gold ring and 5 gms. gold ear rings. Her father had also gifted a golden ring of 10 gms. to accused No. 1. That two sons are born from the wedlock. The elder son was born on 12/12/1978 and the younger one on 3/2/1983. When her husband was posted at Khedgao, Taluka Daund, she was residing with her husband in rented premises. That she had learnt sewing from Mrs. Bhalerao. She purchased a second hand suing machine from her

sister Vidya for Rs. 450/-. She was stitching blouses and clothes for children. At Kedgaon, there was no ladies tailor and therefore, there was no dearth of work. She was earning Rs. 100/- from the stitching business. She used to purchase one gram gold from her earning. She had purchased gold at the rate of Rs. 1000/- per tola. That they used to get grain from their agricultural land. She had fairly deposed that since her husband was working in agricultural department, the agriculturists used to supply vegetables. Her in-laws had gifted her with golden mangalsutra weighing 20 gms. at the time marriage. Her mother-in-law expired in the year 1990. She had resided with them for almost 10 to 15 years. The silver articles, which were found with them, were in the possession of accused No.1. The mother-in-law was residing with accused No. 1 prior to her demise and therefore, the said articles were retained by the appellants. She has further deposed that she had performed thread ceremony of her son. Several silver articles were gifted on the auspicious occasion. She had purchased utensils by selling old clothes. The cupboard in the house was gifted by one of the relatives. That the appellants had not purchased gold after there was an inflation in the price of the gold. In short, the defence witness has given explanation for the possession of the golden ornaments and silver articles and claimed that it is her stridhan and therefore, cannot be included in the disproportionate assets.

25 D.W.2 Ramnath Pataskar is the elder brother of accused No.1. He claims that his statement under Section 161 of the Code of Criminal Procedure, 1973 was recorded by the Investigating Officer on 27/1/1989 and 4/5/1989. He had given him the figures regarding income of all three brothers. According him, Gat No. 243 fetch net profit of Rs. 65,000/- to the accused No. 1 and the defence witness No. 2 during the period 79-80 to 88-89. Third brother was taking his income separately from his share. In Gat No. 243 they cultivated crops like Jawar, sugarcane, Bajari, wheat, Matki, cotton, onion. Part of the sugar cane produce was supplied to the factory and the rest of it was used for preparing jaggery. They received Rs. 10,000/- to 11,000/- from selling fruits of tamarind trees to a contractor. He had shown

receipt issued by buyer in respect of tamarind. He has further deposed that Survey No. 353 was totally depend on rain. From the year 1964 till 1979 they had received approximately Rs. 1500/- to Rs. 3000/- each year as an agricultural income from Survey No. 353 and the brothers were getting net profit of Rs. 3000/- each year from Survey No. 243. The witness has further stated that both the brothers had engaged labourers for cultivating the agricultural land. Amongst the golden ornaments seized from the house of Thite, there were some ornaments which belong to the wife of the defence witness. The ornaments such as golden necklace, gold bangles, ear rings, gold chain and one gold ring. That both the brothers were going for the fair at Gondavalay and thereore, had kept the ornaments with Mr. Thite on 31/1/1988. The defence witness has further stated that the joint family also owns agricultural land at village Giregaon and Malad. Both the lands were sold in the year 1978. Each brother had received Rs. 4000/- towards consideration. The prosecution has failed to shatter the evidence of D.W. 2 in his cross-examination.

26 Perused the evidence adduced by the prosecution and the papers of evidence. The learned Counsel for the appellants submits that in fact, the appellants on the basis of the evidence adduced by the prosecution can show that proper procedure was not followed. It is further submitted that accused acquired disproportionate income of Rs. 1,00,925/- and therefore, filed complaint before the Magistrate. It is also submitted that while granting permission for sanctioning, the judicial officer granted permission for prosecution. The learned Sessions Court had not taken into consideration that the sanction was obtained without following the basic procedure of law.

27 It is pertinent to note that the papers submitted for obtaining sanction showed that the total salary of the accused was Rs. 2,07,972/-. However, upon independent enquiry, it revealed that the total pay allowance was Rs. 1,60,768.75 ps. It is candidly admitted that the statement was called only after sanction was accorded and the said discrepancy was not considered at the time of granting

sanction. This would clearly reflect non-application of mind by the sanctioning authority. P.W.9 had also asked sub-divisional Soil Conservation Officer to collect 7/12 extract, but the period for which 7/12 extracts were called were not mentioned in the sanction order. It is also admitted that the panchanama in respect of the list of assets and expenditures did not find place in the compilation of the papers sent for obtaining sanction. It is also admitted that P.W.9 had no occasion to verify the figures of annexure 'A' with the panchanama as the Investigating Officer had not sent any separate evidence in respondent of the value of the house, motor cycle etc. This further emphasises that there was no application of mind at the time of grant of sanction and according sanction was treated as an empty formality.

28 In the case of **CBI v/s. Ashok Kumar Agarwal reported in AIR 2014 SC page 827,** the Hon'ble Apex Court has reiterated that grant of sanction is not a mere formality. As observed that-

> “It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a

solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.”

The Hon'ble apex Court has further observed as follows :

“(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

> (d) The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.
>
> (e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."

29 In the present case, all the five safeguards as enumerated by the Hon'ble Apex Court are apparently missing on the basis of the record and moreover, there is an admission by P.W. 9 that he had received the material information after according sanction. Section 19 of the P.C. Act is also a protection to the public servant who may be subjected to prosecution by virtue of their posts and are vulnerable to prosecution. In the present case, the brother of the accused No. 1 had filed a complaint against the accused no.1. He has been examined by the prosecution as P.W.8. It is admitted by P.W.8 that he had filed civil suit against the accused No. 1 and brother Ramnath at Daund

Court claiming relief of partition. He has admitted in the cross-examination that tamarind trees yielded good income. The valuation of the income from tamarind trees is not included in the source of income. It appears that P.W.8 was the root cause for initiating prosecution against the appellant no. 1.

30 P.W.7 who was working as assistant superintendent has specifically admitted in the cross-examination that he had not verified pay bill of accused from other offences. He has supplied a copy of the same to the anti-corruption bureau. It is also admitted that the income from encashment of leave was not shown in the statement at Exh. 122 separately. The emolument received from surrender of leave which had started from 1975-76 was also not taken into consideration. More particularly, the very fact that the accused had surrendered leave in the month of June, 1977, March, 1978, June, 1979, June, 1980, November, 1983 were not taken into consideration. Withdrawal of deduction from GPF as advance to the tune of Rs.

12,598/- was also not taken into consideration. It is admitted in the cross-examination that the said amount of Rs. 13,028/- should have been included in the amount received by the accused in Exh. 127. The festival advance amount was not shown in the said statement although the recovery of the same was shown in column No. 12. There is discrepancy as far as the calculation of the basic pay is concerned. It is clear from the evidence on record that the prosecution has not taken into consideration all the material that would enable the investigating agency to calculate the disproportionate assets to the known sources of income. The learned Special Judge has also failed to take into consideration that the ornaments of defence witness No. 1 and the gifts received by the accused No.1 at the time of marriage and on other occasions cannot be included in the disproportionate assets as it would be a streedhan of defence witness No. 1. Hence, it is clear that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. Needless to say that the accused No.1 is being acquitted of the charges under the provisions of Prevention of Corruption Act and hence, as a consequential corollary charges against the appellant No. 2 would necessarily fail. Hence, the appeal deserves to be allowed.

31 It would not be appropriate to part with the judgment without recording appreciation for the special efforts taken by the learned Counsel Mr. Kartik Garg in espousing the case of the appellants. The professional fees is quantified at Rs. 5000/- to be paid to him within 3 months from the date of the order.

32 Hence, following order is passed:

ORDER

(i) The appeal is allowed.

(ii) The conviction recorded against the appellants vide Judgment and Order dated 13/9/1995 in Special Case No. 12 of 1990 is hereby quashed and set aside.

(iii) The appellants are acquitted of all the charges framed against them.

(iv) Bail bonds stand cancelled.

(v) The amount paid towards fine be refunded.

(vi) Writ be issued forthwith.

33 The appeal stand disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)